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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. WALTER STEELE SHIDELER, Defendant and Appellant.	E063607 (Super.Ct.No. FELJS1402448) OPINION

APPEAL from the Superior Court of San Bernardino County. Lorenzo R. Balderrama, Judge. Dismissed.

Rudy Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On May 19, 2014, the San Bernardino County District Attorney's Office filed a petition seeking to extend the commitment of defendant and appellant Walter Steele Shideler, under Penal Code section 1026.5, to the Department of Mental Health, based upon a finding of not guilty by reason of insanity (NGI). Defendant waived his right to a jury trial on May 12, 2015. At the conclusion of the bench trial, the court found defendant met the criteria and extended his commitment to November 20, 2016.

On May 20, 2015, defendant filed a timely notice of appeal.

B. FACTUAL HISTORY

Patton State Hospital Psychiatrist Shana Nguyen was assigned to conduct an NGI extension evaluation on defendant. She also knew defendant because he had been on her unit from September 2014 to the present.

Dr. Nguyen diagnosed defendant with schizophrenia, undifferentiated type. Defendant's symptoms included auditory hallucinations, responding to internal stimuli, agitation, irritability, paranoia, disorganized thinking, disorganized conversation, bizarre thoughts, ideas of reference, flat affect, and disjointed analogical cognition.

During Dr. Nguyen's interview with defendant, she asked him about whether he knew about his mental illness. Defendant responded that the hospital was a rich place that was run by rich people and he was in the hospital because he had something they wanted. This demonstrated that defendant did not understand or comprehend the question. Instead of responding to the question asked, defendant responded to his own

thoughts without recognizing that they had no connection to the question. This is a symptom of schizophrenia.

In addition, staff members observed defendant responding to internal stimuli and, in effect, having a conversation with himself. According to exhibit No. 1, staff noticed during a "tennis" group, defendant talked to himself. When they asked to whom defendant was talking, defendant responded that he was "talking to him," and then continued to sweep the tennis court and talk to himself.

Another note in defendant's file indicated that he continued to "talk, laugh, argue with someone not visible throughout the day." Defendant has also been observed talking to the televisions. These were all symptoms of schizophrenia.

Doctor Nguyen also believed defendant, as a result of his mental disorder, posed a substantial danger of physical harm to others. His symptoms were not in remission and he was not cooperative with treatment to stabilize his mental illness. Defendant had no insight into his mental illness. He repeatedly stated he did not believe he had a mental illness and he would prefer to take no medication. He also indicated a desire to be released into the community. Defendant could name his mental illness but he did so because he heard other people mention the diagnosis. Defendant did not have a true understanding of what schizophrenia was and could not provide any further understanding of the disorder during his conversation with Dr. Nguyen. Defendant was expected to understand what it meant to have that illness, which included understanding the symptoms, recognizing the need for treatment, understanding what the treatment

involved, and developing a prevention plan to avoid further exacerbation of his symptoms.

Defendant's ongoing symptoms of mental illness were significant because he was delusional and paranoid when he committed his underlying offense. The chances of him acting out aggressively again was high because he still had the same symptoms.

As to his underlying offense, defendant portrayed himself as a victim who was acting in self defense. Defendant claimed that the victim of the crime attacked defendant with the baseball bat so he took the bat and hit back in self defense. Defendant did not believe that he did anything wrong. When asked why the police arrested him, defendant responded with a confused, disorganized answer, which did not make any sense to Dr. Nguyen.

According to the police report, there were two witnesses to the underlying offense. They both agreed that defendant was the aggressor and attacked the victim. One of the witnesses attempted to help the victim by giving her a baseball bat to defend herself. Defendant took the bat away from the victim and hit her.

Defendant's lack of insight had also been significant at the state hospital because he had gone to staff and accused fellow patients of attacking him. When staff members observed an incident, they saw defendant being intrusive and harassing the other patients, in effect, starting the altercation. Defendant demonstrated no accountability or remorse for anything he had done even when he provoked the incidents.

Given defendant's behavior in custody, it was likely that if he was free in the community, he would behave in a similar fashion and probably end up hurting someone else while still believing that he did nothing wrong, and blaming the victim.

Defendant did not have a viable release or relapse-prevention plan. Such a plan was required for all patients who were hospitalized at Patton State Hospital. The fact that defendant did not have a plan showed that defendant had not reached a state where he can be safely released into the community. Defendant did not want to complete the release plan, which also demonstrated an unwillingness to cooperate fully in treatment.

Defendant also had a history of substance abuse. This was significant because substance abuse can exacerbate or sometimes cause mental illnesses. Defendant did not talk about his substance abuse issues. Defendant did not even acknowledge that he had a substance abuse problem.

Defendant was voluntarily compliant with his medication. Dr. Nguyen believed that the medication was helping with some of defendant's symptoms. Defendant, however, frequently asked to have his medication discontinued. In the past, defendant received higher doses of Risperdal than he was currently receiving. At that time, defendant's symptoms were better controlled. Defendant refused to cooperate or agree to increase his Risperdal dosage.

Defendant attended about half of his treatment groups in the prior year. This failure to attend on a regular basis was not optimal and limited his ability to learn about his mental illness. Dr. Nguyen did not believe defendant was actively participating in the

treatment. Some patients attended the treatment groups simply to avoid losing privileges at the hospital, but they were not actually trying to be successful in treatment.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. Appointed appellate counsel has filed a brief summarizing the facts and proceedings below and drawing this court's attention to the applicable law on sufficiency of the evidence in mentally disordered offender (MDO) proceedings. Counsel presents no actual argument for reversal and requests this court to review the commitment proceedings in accord with *People v. Serrano* (2012) 211 Cal.App.4th 496, *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738.

In making this request, counsel notes that in *People v. Taylor* (2008) 160 Cal.App.4th 304, the Second District considered whether the *Wende/Anders* procedures were applicable to MDO commitment cases and concluded they were not. Counsel also acknowledges that in *In re Conservatorship of Ben. C.* (2007) 40 Cal.4th 529 (*Ben C.*), the California Supreme Court held that the Lanterman-Petris-Short Act (Welf. & Inst. Code, §§ 5000 et seq.) conservatorship proceedings are not subject to *Wende/Anders* review. (*Ben C.*, at p. 535.) We agree with *Taylor*, *supra*, and decline to apply *Wende/Anders* procedures to this MDO case.

Because defendant has failed to raise an arguable issue on appeal from an order of recommitment, we decline to retain this case, as is permitted by *Ben C.*, and dismiss the appeal. (*Ben. C.*, *supra*, 40 Cal.4th at p. 544; *People v. Serrano*, *supra*, 211 Cal.App.4th at p. 501.)

DISPOSITION

The appeal is dismissed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.